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ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

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(202) 225-3951

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October 20, 2004

JOHN CONYERS, JR., Michigan
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LINDA T. SANCHEZ, California

The Honorable Scott J. Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036-4505

Dear Mr. Bloch:

I am writing to ask that the Office of Special Counsel investigate whether Dr. Condoleezza Rice, the President's National Security Advisor, is violating the Hatch Act by delivering campaign speeches in battleground states. I am sure you would agree that any political activity on the part of the National Security Advisor would undermine the trust bestowed on such a non-partisan post.

Under governing law, no employee of the National Security Council "may take an active part in political management or political campaigns."¹ Your Office's own materials interpret this to mean that members of the National Security Council "may not campaign for or against a candidate or slate of candidates in partisan election" and "may not make campaign speeches or engage in other campaign activities to elect partisan candidates."² While there is an exception to this prohibition for employees confirmed by the Senate, Dr. Rice is not such an employee and therefore is barred from this type of political activity.³ As such, she could be subject to removal from her post.⁴

¹5 U.S.C. § 7323(b)(2).

²U.S. OFFICE OF SPECIAL COUNSEL, POLITICAL ACTIVITY AND THE FEDERAL EMPLOYEE 7 (Aug. 2000) (emphasis in original).

³Indeed, both she and the White House relied upon her role as a presidential advisor in initially refusing to have her testify before the National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission"). Dana Milbank & Walter Pincus, *Rice Defends Refusal to Testify*, WASH. POST, Mar. 29, 2004, at A1.

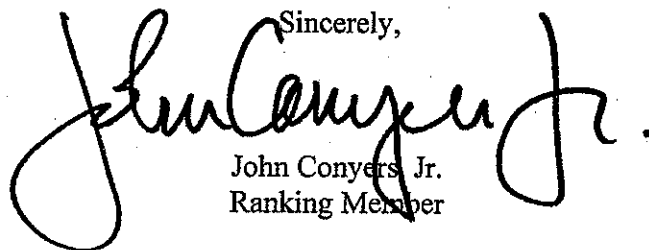
⁴5 U.S.C. § 7326.

The Honorable Scott J. Bloch
Page Two
October 20, 2004

Unfortunately, according to today's *Washington Post*, Dr. Rice is giving "nine speeches in battleground states in the final eight weeks of the election."⁵ While Dr. Rice is not prevented from speaking during the campaign, her engagements appear to cross the line of legality. First, she is appearing largely in states that are hotly contested in the presidential campaign, such as Ohio, Pennsylvania, and Michigan.⁶ In addition, her speeches focus on not only defending the Bush Administration's policy regarding both the war in Iraq and the war on terrorism but also attacking assertions made by the Democratic presidential nominee.⁷ Furthermore, it is unclear who is paying for Dr. Rice's travel and lodging expenses for these trips. If the Bush-Cheney campaign is paying, the trips clearly are political in violation of the Hatch Act; if the White House is footing the bill, taxpayers deserve to know why they are footing the bill for politically-related activities. Finally, I would note that White House records indicate that until now the vast majority of her speeches have been in Washington, DC, or other non-battleground locations.

I look forward to whether the Office of Special Counsel will investigate this potentially illegal conduct. Please reply through Perry Apelbaum or Ted Kalo of my Judiciary Committee staff at 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423).

Sincerely,



John Conyers, Jr.
Ranking Member

cc: The Honorable F. James Sensenbrenner, Jr.
Chairman
U.S. House Comm. on the Judiciary

⁵Glenn Kessler, *Rice Hitting the Road to Speak*, WASH. POST, Oct. 20, 2004, at A2.

⁶*Id.*

⁷*Id.*



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

July 7, 2005

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

Re: OSC File No. HA-05-0168

Dear Representative Conyers:

I am writing in response to your letter to the U.S. Office of Special Counsel (OSC) regarding your request that we investigate a potential Hatch Act violation by Dr. Condoleezza Rice when she delivered various speeches during 2004. We have completed our investigation of this matter. The matter was reviewed and analyzed by career staff of the Hatch Act Unit within days of receipt of your request in late October 2004. Career staff continued to analyze and process this case from that time. Any information to the contrary is incorrect. The October 2004 review and analysis resulted in a recommendation to the Special Counsel that Dr. Rice's activities did not appear to have violated the Hatch Act. After a complete investigation of this matter, a final determination was made, which was consistent with the preliminary review. I am enclosing a copy of the determination for your review. Thank you for contacting us about this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch".

Scott J. Bloch
Special Counsel

Enclosures



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

July 7, 2005

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

Re: OSC File No. HA-05-0168

Dear Representative Conyers:

This letter is in response to your request that we investigate a potential Hatch Act violation by Dr. Condoleezza Rice when she delivered various speeches during 2004. Specifically, it was alleged that while Dr. Rice was employed as the National Security Advisor she gave approximately nine campaign speeches in battleground states during the final eight weeks of the 2004 Presidential election. We have reviewed those speeches and the context in which they were delivered. As explained below, we have concluded that during these events Dr. Rice did not engage in prohibited political activity in violation of the Hatch Act.

As the Assistant to the President for National Security Affairs (commonly referred to as the National Security Advisor), Dr. Rice was an employee of the White House Office in the Executive Office of the President, and therefore, she was covered by the Hatch Act, which places certain political activity restrictions on federal employees. See 5 U.S.C. §§7323(a)(1)-(4), 7324. While the Act would have permitted Dr. Rice to actively participate in partisan political management and partisan political campaigns, it would have prohibited her from, among other things, using her official authority or influence for the purpose of interfering with or affecting the result of an election. 5 U.S.C. § 7323(a)(1). Thus, for example, the Act would have prohibited Dr. Rice, in her official capacity, from campaigning or making campaign speeches on behalf of a candidate in a partisan election. The Act, however, would not have prohibited Dr. Rice, like Senate-confirmed Presidential appointees, from engaging in such activities as long as she was not acting in her official capacity.

We have determined that Dr. Rice's speeches were not campaign speeches. Specifically, our review found that her travel to these events was designated as official, that the engagements where she delivered the speeches in question were not campaign events and that her speeches did not advocate for President George W. Bush as a candidate for reelection.

The Hatch Act did not prohibit Dr. Rice from speaking in her official capacity at nonpartisan events like the ones she attended during the relevant time period (e.g., World Affairs Council of Seattle, Anniversary Dinner of Yeshiva Beth Yehudah, etc.) because she was speaking about official matters and did not campaign on behalf of the President. Moreover, the fact that her appearance at these events during the weeks prior to the election may incidentally have had a beneficial effect on President Bush's reelection efforts would not transform an otherwise non-political event or speech into a political one.

Lastly, we note that in your submission to our office you identified Dr. Rice as an employee of the National Security Council, and thus, further restricted by the Hatch Act from engaging in political campaigning under 5 U.S.C. § 7323(b)(2). Although Dr. Rice at the time of the activities addressed in this matter was a regular attendee of the National Security Council, she was not an employee of the National Security Council. As explained earlier, she was an employee of the White House Office. As such, the further restrictions of 5 U.S.C. § 7323(b)(2) were not applicable to Dr. Rice. Nevertheless, even assuming she was further restricted pursuant to that provision, her speaking engagements would not have violated the Hatch Act because they did not involve campaign activities, as discussed above.

Based upon the preceding, we do not believe that Dr. Rice's participation in the above-referenced activities violated the Hatch Act. Therefore, we are closing our file in this matter without further action. Please call me at 202-254-3674, if you have any questions regarding this matter.

Sincerely,



Ana Galindo-Marrone
Chief, Hatch Act Unit

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
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April 13, 2005

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

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ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California
ADAM SMITH, Washington
CHRIS VAN HOLLEN, Maryland

Honorable Scott J. Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036-4505

Dear Mr. Bloch:

On October 20, 2004, the Washington Post ran a story describing how then-National Security Advisor Condoleezza Rice had been giving what appeared to be campaign speeches in battleground states during the final eight weeks before the Presidential election. Glenn Kessler, "Rice Hitting the Road to Speak", Washington Post, October 20, 2004, at A2. That same day, I wrote to you, requesting that the Office of Special Counsel conduct an investigation into whether Dr. Rice's activities violated the Hatch Act. As you know, while the Hatch Act does not prohibit employees who are paid by appropriations from the White House from engaging in political activity on duty and during work hours, the costs associated with such political activity may not come out of the United States Treasury.

According to a recent complaint filed by certain non-profit organizations and anonymous OSC employees, my request for an investigation of Dr. Rice's activities received unusual treatment, particularly as compared to a matter involving a July 26, 2004 visit by Senator Kerry to the Kennedy Space Center in Florida which was alleged to violate the Hatch Act. Specifically, according to the complaint, when my letter came in, you did not refer the complaint immediately to career employees in OSC's Hatch Act Unit, even for a preliminary investigation or inquiry. Instead, according to the complaint, either you or Deputy Special Counsel Renne deliberately assigned the case to yourselves, held on to it until after the election without taking any action at all, and then transmitted it to the career staff in the Hatch Act Unit for handling after the election. The complaint contends that—by contrast—you ordered an immediate on-site investigation of the Kerry matter last August, only days after Sen. Kerry visited the NASA facility. Indeed, an article that appeared in the Washington Post on Sunday, August 1, states that your agency had already formally requested information from NASA about the Kerry town hall meeting, which had been held only few days earlier on July 26, 2004. See Steve Barr, "Kerry Visit Could put NASA in the Hot Seat", Washington Post, August 1, 2004, C2.

Honorable Scott J. Bloch
Page Two
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These allegations of disparate treatment are serious ones. Your office is charged with the even-handed enforcement of the Hatch Act, which itself was designed to ensure that partisan political considerations do not affect the government's discharge of its duties. Indeed, given that OSC has exclusive authority to enforce the Hatch Act in the federal government, it is crucial that your agency avoid even the appearance of partisan enforcement of that Act. I am asking, therefore, that you provide a detailed and specific response to the allegations in the complaint regarding the disparate treatment your office afforded in the two cases identified above. I am also interested in OSC's handling of another complaint that I filed on September 24, 2004, regarding a presentation made by certain officials of the U.S. Department of Agriculture, to the annual conference of the American Dairy Products Institute and the American Butter Institute.

In explaining the disparate treatment you allegedly afforded the two complaints, and your investigation of the USDA complaint, I request that you answer the following specific questions, in addition to providing your response to the allegations in the complaint:

A: OSC's Routine Procedures

1. Describe in detail the routine procedure OSC employs for processing incoming Hatch Act complaints, including but not limited to the following:

- a. When a complaint comes in alleging a violation of the Hatch Act, who receives it, to whom is it routed, and for what purpose?
- b. What is the procedure that is used to record the receipt of the complaint?
- c. Who is responsible for recording the receipt of the complaint into the OSC case tracking system and when is that record made?
- d. What is done with the complaint after it is entered into the case tracking system?
- e. When is an official case file established?
- f. Who receives the official case file after a complaint is entered into the case tracking system?
- g. Does the case tracking system record keep track of the location of the official case file?
- h. Is there a policy that determines the priority for investigating Hatch Act complaints; if so what is that policy and who is responsible for assigning the priorities?
- i. Who decides which members of the staff will investigate the complaint.

- j. What standard procedures does OSC follow when it investigates a Hatch Act complaint.
 - k. Who decides the when to begin investigating a Hatch Act complaint?
2. Is the procedure for processing incoming Hatch Act complaints different when a member of Congress files the complaint? If so, how?

B. OSC's Handling of the Rice Complaint:

- 1. On what date did OSC receive my October 20, 2004 letter concerning Dr. Rice?
- 2. Describe the handling of my letter beginning with the date it was received and up until the present time, including but not limited to:
 - a. The date the complaint was entered into OSC's case tracking system and who entered it.
 - b. To whom the case was assigned after it was entered into the OSC case tracking system and the date it was assigned.
 - c. All members of OSC's staff who received a copy of the letter and the day they received it.
 - d. Each individual who has been in possession of the official case file since October 20, 2004 and the dates that the file was in their possession.
 - e. Your role and the role of Deputy Special Counsel Renne in handling the my complaint, beginning with the date that OSC received the letter. Specifically, state whether and on what dates you and/or Deputy Special Counsel Renne met with members of OSC's career staff (including but not limited to William Reukauf and/or Ana Galindo Marrone) to discuss my complaint. Is it true that Deputy Special Counsel Renne or another member of your immediate staff maintained possession of the case file until after the Election? If so, why? If not, who had possession of the case file through Election Day?
 - f. The date that the career staff received the case file and were directed to begin working on it.
 - g. The date OSC began an investigation of my complaint.
 - h. The actions that were undertaken to request information or otherwise investigate my complaint including when those actions were taken and by whom. Identify the dates of

Honorable Scott J. Bloch
Page Four
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all written or oral requests for information and interviews conducted in connection with my complaint.

i. The current status of the Rice investigation.

3. Explain all deviations from the routine procedures identified above in the handling of my complaint.

C. OSC's Handling of the Kerry Matter

1. On what date did OSC receive a complaint alleging that a violation of the Hatch Act occurred in connection with Senator Kerry's visit to the Kennedy Space Center? If OSC did not receive a complaint, state the basis for OSC's decision to conduct an investigation of the visit.

2. Describe the handling of the allegations regarding Senator Kerry's visit beginning with the date OSC received the complaint or otherwise opened a case file, including but not limited to:

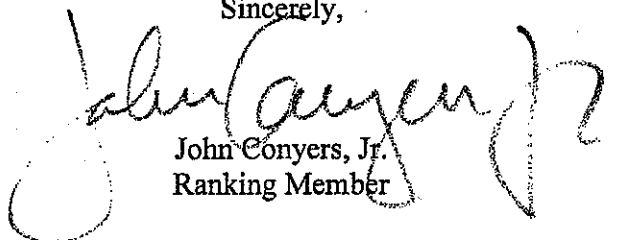
- a. The date the complaint or case was entered into OSC's case tracking system and who entered it.
- b. To whom the case was assigned after it was entered into the OSC case tracking system and the date it was assigned.
- c. When OSC sent out its first request for information and who prepared it.
- d. Who directed the immediate on-site investigation of the allegations regarding the Kerry visit and why was an immediate investigation was ordered.
- e. Your role and the role of Deputy Special Counsel Renne in handling the allegations concerning the Kerry visit, beginning with the date that OSC received the allegations. Specifically, state whether and on what dates you and/or Deputy Special Counsel Renne met with members of OSC's career staff (including but not limited to William Reukauf and/or Ana Galindo Marrone) to discuss the Kerry complaint.
- f. The OSC officials responsible for supervising the investigation of the complaint.
- g. The date OSC began an investigation of the Kerry allegations.

Honorable Scott J. Bloch
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- i. Identify all individuals responsible for the preparation of the slides that were the subject of my complaint, state whether OSC interviewed those individuals. What did those individuals identify as the purpose of the titles of the slides and the content concerning how to "maximize" votes from dairy states?
 - j. Did OSC interview Dr. Salathe; if so, how did he explain the titles of the slides and their content, discussing how to "maximize" votes from dairy states?
 - k. Did OSC secure a transcript of the remarks made at the conference; if not, why not?
3. Explain all deviations from the routine procedures identified above in the handling of my complaint concerning the presentation.

Please provide detailed responses to these questions by close of business on Tuesday, April 26, 2005. Also, please reply through Perry Apelbaum or Ted Kalo of my Judiciary Committee staff at 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax 202-225-4423).

Sincerely,

A handwritten signature in dark ink, appearing to read "John Conyers, Jr.", with a large, stylized flourish extending from the bottom left.

John Conyers, Jr.
Ranking Member



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
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The Special Counsel

January 27, 2006

The Hon. John Conyers
Ranking Member
House of Representatives
Committee on the Judiciary
Washington, D.C. 20515

Re: OSC File No. HA-05-2069

Dear Representative Conyers:

I apologize for the delay in responding to your April 13, 2005 and September 27, 2005 letters regarding how OSC processes Hatch Act complaints.

The initial handling of the former Agriculture Secretary Ann Veneman's case (above referenced case) was fairly typical of cases handled in the Hatch Act Unit (HAU) and not politicized at all. Each investigation and prosecution is conducted on an individual case-by-case basis. When a full investigation is required, due to the merits of the case, the investigation and the substantive prosecutorial decisions may take anywhere from one to three years. We are currently in the process of shortening this time frame by our backlog reduction efforts and overall Reorganization.

Consistent with the practices of previous Special Counsels, there is a priority system in place for Hatch Act complaints related to high level Executive Branch employees or congressional inquiries. These are normally brought to my attention, not to politicize matters but to make sure I'm aware of them. As you know, 2004 was a very busy election year and we received thousands of inquiries and hundreds of formal complaints. The HAU has a longstanding reputation for professional, thorough and unbiased investigations. The Unit should not be used as a political weapon during a busy election season.

Any fair review of the HAU would show that it is a model of non-partisan enforcement of the law. Indeed, if you look at what OSC has prosecuted since my arrival last January, you will find numerous cases that have been settled or filed at the Board (the Merit Systems Protection Board), against individuals that identify themselves as Republicans, Democrats, Green Party members, when the HAU has recommended such action.

Unfortunately, I never received your correspondence and was unaware of it, until it was brought to my attention recently. I have learned that when OSC received your complaint about former Secretary Veneman last Fall, it was inadvertently attached to another complaint and was not discovered until June 2005. We had an internal investigation of what happened. Based on

what I know, there was no intention to delay or prevent any investigation. I was totally unaware of this instance and have now taken the proper steps to ensure that it does not happen again.

Upon discovery, the matter was immediately assigned to an attorney within the HAU pursuant to regular procedures. Considering OSC's normal investigation and prosecution time frame and sequence, this inadvertent deviation had no bearing on the outcome of the complaint. Secretary Veneman resigned from the administration shortly after you sent the letter and long before OSC would have been able to complete an investigation of your complaint. Please keep in mind, the Hatch Act does not prohibit an employee appointed by the President, by and with the advice and consent of the Senate (PAS), from engaging in political activity while on duty, provided the costs associated are not paid for by money derived from the U.S. Treasury. In such cases, if an investigation for a violation is done and if the facts are warranted, a recommendation to the President for disciplinary action may be made.

It has long been the policy of OSC not to investigate or prosecute cases when a federal employee leaves federal service, which was the case here. I did not change that policy on my arrival at OSC. In fact, you received a letter from the HAU informing you of this policy and that OSC would take no further actions in regard to this complaint. Now that I have been fully briefed on the law and facts of this case, and also considering our own mistake inadvertently attaching this to another case, I have reconsidered this position on this case. I will instruct the HAU to conduct the necessary investigation to determine whether any funds should be reimbursed to the federal treasury. I do this to avoid the appearance of impropriety. We will follow normal OSC procedures. In following the advice of my professional career staff, the HAU will be in contact with your office to obtain more information so that the investigation can proceed.

You also raise questions about the handling of the Condoleezza Rice case and a case in which it is alleged John Kerry conducted a partisan campaign event at the Kennedy Space Center. You initially made these allegations regarding Condoleezza Rice within days of the November, 2004 general election. You claimed that the speeches of Ms. Rice were in violation of the Hatch Act. Your letter of April 13, 2005, cites a Complaint that argues that OSC's handling of the case was slow and not handled by the career staff. Nothing could be further from the truth. Within days of receiving the complaint, the two senior most career employees that work Hatch Act cases were consulted and reviewed almost every single speech that Ms. Rice gave over the prior year. They both concluded that the speeches were not in violation of the Hatch Act. Furthermore, the conclusion of the fact gathering and closure of the case (all by career staff) occurred within the normal timeframe for case handling. The complaint came to OSC on October 21, 2004, and the investigation and closure concluded on July 7, 2005.

Your letter of April 13, 2004, further refers to an incident that occurred at the Kennedy Space Center in Florida where John Kerry held a partisan rally for his presidential election on federal property where federal employees worked. The Complaint that you reference alleges that I gave the Kennedy Space Center case undue attention and hastened the investigation. You are trying to compare this case to the Rice case, in that I was allegedly too slow to investigate the Rice case. Yet there was not a single interview at the Kennedy Space Center until nearly three months after the complaint came to OSC. This was even after the initial inquiry by career

The Special Counsel

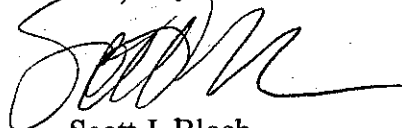
staff showed that there was a likely violation. The OSC complaint on this case was opened on July 29, 2004. Furthermore, the case was not looked into as a violation of the Hatch Act by John Kerry. He was not covered by the Act. The investigation concerned serious potential Hatch Act violations by the head of the Kennedy Space Center. It is unknown what that person's political affiliation is. The investigation is not due to end until probably early 2006.

In summary, the Complaint that you cite misrepresents these two cases by taking the facts out of context and is unfair to the professional career employees that dedicate themselves to enforcing the law.

One of the important provisions of the Hatch Act is its prohibition on the use of "official authority" to influence the outcome of a partisan election. I ask you to refer to 5 U.S.C. §§ 1502 (a)(1)-(2). Federal officials are forbidden to use their authority to try to influence the outcome of an election because nothing could be more partisan than using one's position in a way that denigrates the public trust in that manner. Any allegation of this magnitude, such as that presented by your filing complaints on Condoleezza Rice and Secretary Ann Veneman (had we known such was sent by you to our office), filed so close to a partisan election, could conceivably cause a reasonable observer to conclude a violation of the spirit of this prohibition occurred. It is plausible that these allegations could make their way into the media and adversely affect an election, even though later review would conclude that the allegations were baseless. In this regard, OSC must remain ever vigilant. OSC must never be used as a tool for election activity. I say this only to demonstrate the balancing test we must go through to conduct timely and lawful investigations. That is why no allegations of violation of the Hatch Act by members of the Administration or involvement in such were put into a press release or rushed to conclusion in anticipation of the election, and why I will never allow such to occur on my watch.

I hope this helps you to understand what actually occurred in these cases. Thank you for contacting the Office of Special Counsel.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Scott J. Bloch', written over a horizontal line.

Scott J. Bloch
Special Counsel